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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

First Named Applicant: Toyoshima) Art Unit: 2617
Serial No.: 09/974,724)
Filed: October 9, 2001) Examiner: Bhattacharya
For: WIRELESS MODEM MODULE SERVER SYSTEM) 50P4257.04
) September 1, 2007
) 750 B STREET, Suite 3120
) San Diego, CA 92101
)

APPEAL BRIEF

Commissioner of Patents and Trademarks

Dear Sir:

This brief responds to the Office Action dated August 10, 2007.

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(1) Real Party in Interest

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The real party in interest is Sony Corp.

(2) Related Appeals/Interferences

Appeals have been filed in related application serial nos. 09/972,183 and 09/972,781.

(3) Status of Claims

Claims 1-29 are canceled, Claim 30 stands finally rejected, and Claim 30 is appealed.

(4) Status of Amendments

An amendment canceling claims has been submitted and presumably will be entered for appeal.

(5) Concise Explanation of Subject Matter in Each Independent Claim, with Page and Figure Nos.

As an initial matter, it is noted that according to the Patent Office, the concise explanations under this section are for Board convenience, and do not supersede what the claims actually state, 69 Fed. Reg. 155 (August 2004), see page 49976. Accordingly, nothing in this Section should be construed as an estoppel that limits the actual claim language.

Claim 30 sets forth a digital camera system including a digital camera (e.g., one implementation of the host unit 210, page 7, lines 11-21) and a wireless transceiver (100, *id.*) coupled to the camera. A memory (18, figure 2; page 5, line 18) is provided for storing digital photographs from the camera. Data is automatically sent using the wireless transmitter to a remote location via a network router when an amount

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of data stored in the memory reaches a threshold, page 7, lines 22-27. A threshold indicator indicates that a transfer operation is taking place, page 7, lines 24 and 25.

(6) Grounds of Rejection to be Reviewed on Appeal

Claim 30 has been rejected under 35 U.S.C. §103 as being obvious over Kanevsky et al., USPN 6,393,470 in view of Wasula et al., USPP 2002/0054224.

(7) Argument

In this lengthy prosecution, two examiners have applied twelve references through multiple office actions and two previous appeal briefs, both of which, filed after the examiner(s) finally rejected the claims, were nonetheless greeted by reopenings instead of Answers. Further churning of prosecution at this advanced stage would be unreasonable. Either an allowance or an Examiner's Answer will be expected in response to this *third* appeal brief.

As admitted on page 4, lines 9 and 10 of the Office Action, Kanevsky et al. fails to teach a threshold indicator indicating that a transfer operation is taking place as now recited in Claim 30. In col. 4, lines 32-46 Kanevsky et al. discusses generating a warning when the memory becomes full, but the warning does not indicate an actual transfer is taking place. Instead, it is sent to a transmitter server 102 to start a "reload" of data.

Wasula et al., paragraph 31 has been relied on for the missing element without explicitly pointing out what, precisely, in the thirty lines of this paragraph is being considered to be an indication of an occurring

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transfer, and no wonder. As set forth below using the actual teachings of Wasila et al., there is no such indication going on.

With more specificity, paragraph 31, appearing in its entirety below, mentions the verb "indicating" only once, in connection with the function of "image utilization fields" (emphasis below is mine):

"[0031] As previously described, each customized profile in the profile table stored in the firmware memory 28 contains a plurality of image utilization fields indicating *the desired conditions* to be used during the transfer of a captured image from the digital camera 10 to an external device, such as the host computer 40 or the Network Service Provider 70 shown in FIG. 1. Such image utilization fields can include, for example, an event description or title of the captured image, a prefix for the image file name, an index field for the image file name, the format of the image file, a destination directory, and an image editing application software preference. A customized profile will now be described in more detail with reference to an example shown in FIG. 3A. As shown on line 1 of FIG. 3A, the customized profile is entitled "John's Home Use." The local options for the host computer 40 are shown in lines 3-10, and the Network Options for the Network Service Provider 70 are shown in lines 13-17. Lines 2 and 12 are not part of the customized profile, but have been included for clarity of explanation. In this example, the images are to be filed directly to the Kodak Picture Network (KPN) server under the user's account in a folder called "Sam's 1 st Birthday" (line 13 of FIG. 3A). Each image file is to be prefaced with "Sam's 1 Bday" (line 15 of FIG. 3A) and numerically ordered using the 01 suffix (line 16)."

Accordingly, what paragraph 31 teaches is that image utilization fields indicate conditions to be used during data transfer, not that any indication, much less that a transfer operation is actually taking place, is given as is otherwise required in Claim 30. The fields can indicate event description or title of the captured image, a prefix for the image file name, an index field for the image file name, the format of the image file, a destination directory, and an image editing application software preference - but there is no teaching that these software parameters are ever presented as "indications" much less of indications that a transfer operation is actively taking place as required by the claim.

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Paragraphs 27 and 40 of Wasula et al. further inform the nature of the "image utilization fields":

"[0027] In accordance with the present invention, a database is provided in firmware stored in the firmware memory 28 of the digital camera 10. The database, which is preferably a profile table, can include a plurality of customized profiles. These customized profiles each contain a plurality of image utilization fields which are used in connection with the transfer of images from the digital camera 10 to the host computer 40 or other external device, and the subsequent utilization of the transferred images. For example, suppose a user wants to upload images to the host computer 40. A user either creates a new customized profile or selects an existing customized profile which defines options for how the image transfer is to be conducted. The customized profile can be produced in advance on the host computer 40 or directly on the digital camera 10 by a user actuating a keyboard 54 or the user interface 24, respectively. Preferably, the digital camera 10 is provided with a profile table containing a default profile which can be customized by the user. Multiple profiles can be produced by a user or users, and such profiles can be selected for appropriate transfer and utilization of the captured images to the host computer 40. These profiles are used in conjunction with a digital image transfer application program resident on the host computer 40, which will be described later.

"[0040] The digital image transfer application program sets up the appropriate image transfer conditions (block 450) and transfers the image from the digital camera 10 to the host computer 40 or other external device (block 460) in accordance with the image utilization fields defined in the customized profile. In particular, the digital image transfer application program first looks at the destination directory field (e. g., directory or album), in the appropriate customized profile (e. g., line 3 in FIG. 3A), and if such destination directory does not exist, creates that directory, for example, on either the hard drive 56 of the host computer 40, or on a hard disk space on the Network Service Provider 70. The digital image transfer application program then modifies, as appropriate, the image name using the filename preface and suffix fields (e. g., lines 5 and 6, respectively, in FIG. 3A), the image format using the format field (e. g., line 7 in FIG. 3A), and resolution using the resolution field (e. g., line 4 in FIG. 3A), and stores the transferred image in the appropriate destination directory (e. g., line 3 in FIG. 3A). After the image is transferred and stored in a destination directory, the digital image transfer application program looks for an "image editing application preference" field (e. g., "RunApp" line 8 in FIG. 3A) in the profile of that image, for example, Adobe PhotoDeluxe software. If such a field exists, that preferred image editing application is automatically launched and the image is pulled into that application for the user to access. The image can then be deleted from the removable memory card 30 of the digital camera 10 (block 470), according to the "Erase After Transfer" field (line 10 in FIG. 3A). Alternatively,

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a global preference can be stored in the firmware memory 28 of the digital camera 10 and used for all transfers. It should be noted that if the image is deleted as a global preference, all images get deleted after transfer to the host computer 40 regardless of the individual profiles. The above process is repeated for all captured images."

Thus, paragraph 27 explains that the image utilization fields are used in connection with the transfer of images and the subsequent utilization of the transferred images, but not that any indication is ever given of the actual transfer taking place. Instead, paragraph 27 divulges that a user can upload images to the host computer by creating a customized profile or by selecting an existing customized profile which defines options for how the image transfer is to be conducted, i.e., which contains "image utilization fields" defining these options.

Likewise, paragraph 40 clarifies that the image utilization fields are not used to indicate an actual transfer actively taking place but rather to conduct the transfer. As an example paragraph 40 discloses that the destination directory field (e. g., directory or album), in the appropriate field is used to know where to send the image. But this occurs without any evident indication at all being given as to the fact that data transfer is taking place as required by Claim 30.

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APPENDIX A - APPEALED CLAIMS

30. A digital camera system, comprising:

- a digital camera;
- a wireless transceiver coupled to the camera; and
- a memory for storing digital photographs from the camera, data being automatically sent using the wireless transmitter to a remote location via a network router when an amount of data stored in the memory reaches a threshold; and
- a threshold indicator indicating that a transfer operation is taking place.

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APPENDIX B - EVIDENCE

None (this sheet made necessary by 69 Fed. Reg. 155 (August 2004), page 49978.)

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APPENDIX C - RELATED PROCEEDINGS

None (this sheet made necessary by 69 Fed. Reg. 155 (August 2004), page 49978.)

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